

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**September 3, 2013 at 9:32 A.M.**

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1.     [13-27809](#)-B-7     LUIS DOMINGUEZ MURILLO     MOTION TO REDEEM  
EJS-1                   AND ANNE DOMINGUEZ     8-6-13     [\[16\]](#)

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 722. The debtors are authorized to redeem their 2002 GMC Envoy XL from Sport Time Auto Finance for \$2,500.00. Payment of the redemption amount shall be made by cashier's check received by creditor on or before September 13, 2013.

In the absence of opposition, for purposes of this motion, the court finds that the 2002 GMC Envoy XL is personal property used for personal family or household use, that it secures a dischargeable consumer debt and that it has been claimed as exempt pursuant to 11 U.S.C. § 522.

The court will issue a minute order.

2.     [13-29695](#)-B-7     ILONA TOMAK     MOTION TO ABANDON  
MS-1   7-27-13     [\[12\]](#)

**Tentative Ruling:** This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interests in a 2000 Freightliner C12064ST-Century 120 and 1999 Manac 53x102, Air Ride Swing Doors (Dryvan Trailer) ("Truck and Trailer"), are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Truck and Trailer are of inconsequential value and benefit to the estate. The Truck and Trailer are exempt pursuant to 11 U.S.C. § 522. The trustee has filed a report of no distribution.

The court does not authorize abandonment of the business name "AMV Express" because on the debtor's Schedule B (Dkt. 1, p.22, Item 13) the debtor states under penalty of perjury that she owns no stock or interest in any incorporated or unincorporated business.

The court will issue a minute order.

3. [13-29696](#)-B-7 VERONICA RAMIREZ MOTION TO COMPEL ABANDONMENT  
TOG-4 8-20-13 [[16](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter. The court issues the following abbreviated ruling.

The motion is denied without prejudice.

Motions set pursuant to LBR 9014-1(f)(2) require the moving party to file and serve the motion at least fourteen (14) days prior to the hearing date. LBR 9014-1(f)(2). Notice of this hearing had to have been filed and served on all parties in interest no later than August 20, 2013. The movant filed and served an amended notice of hearing to all parties in interest on August 21, 2013, which is only thirteen (13) days prior to the hearing date.

The court will issue a minute order.

4. [13-24651](#)-B-7 DAVID/KAREN FARLEY MOTION TO COMPEL ABANDONMENT  
JRR-1 7-22-13 [[18](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in the real property located at 6530 Misery Lane, Pollock Pines, CA 95726 (009-350-15-1), and the household goods and furnishings located therein as scheduled in debtors' Schedule B filed April 4, 2013 (Dkt. 1, p. 23) (collectively, the "Property"), is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Property, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The debtors have proven that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

5. [13-26354](#)-B-7 CLEONA CASH MOTION TO DISMISS CASE  
UST-2 7-26-13 [[27](#)]

**Tentative Ruling:** The court issues the following abbreviated ruling.

The Stipulation between the debtor and United States Trustee filed on August 27, 2013 (Dkt. 40) is approved. The motion is dismissed.

The court will issue a minute order.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell real property located at Lot 800 Rainbow Rock, Brookings, OR 97415 ("Property") in an "as-is" and "where-is" condition to Robert Grover and Nadine Grover for \$50,100.00. The sale of the Property shall be free and clear of Virginia Longacre's lien pursuant to 11 U.S.C. § 363(f)(3). Ms. Longacre's lien shall be transferred to the net proceeds of the sale, and the entire amount of the net proceeds shall be held by the trustee in a segregated account pending further order of the court. The trustee is authorized to execute all documents necessary to complete the approved sale. The application for real estate broker's commissions is approved on a final basis in the amount of \$3,006.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The sale shall be subject to overbidding on terms approved by the court at the hearing on the motion.

On November 21, 2011, the debtors filed a chapter 7 petition. By order entered on August 15, 2012 (Dkt. 39) (the "Order"), the court authorized the trustee to retain Century 21 Agate Realty ("Century 21") as real estate broker for chapter 7 trustee in this case. Century 21 is to receive 6.00% of the sales price of the Property. Century 21 now seeks compensation for commissions earned from the sale. As set forth in the application, the approved commissions are reasonable compensation for actual, necessary and beneficial services.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The trustee shall submit an order that conforms to the foregoing ruling.

**Disposition Without Oral Argument:** The motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee is authorized to employ Matthew P. Donahue ("Mr. Donahue"), effective August 6, 2013, as special counsel, on the terms and for the purposes set forth in the motion. Mr. Donahue's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The chapter 7 trustee shall submit an order approving employment of Mr. Donahue that conforms to the foregoing ruling.

8. [13-24933](#)-B-7 JEFFREY/NICOLE THOMPSON MOTION TO EXTEND TIME AND/OR  
SAG-1 MOTION TO DELAY DISCHARGE  
7-3-13 [[17](#)]

**Tentative Ruling:** The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion was not properly served. This motion seeks a delay of the debtors' discharge pursuant to Fed. R. Bankr. P. 4004(c)(2) and a deferment of the time period for filing a reaffirmation agreement pursuant to Fed. R. Bankr. P. 4008(a) for the purpose of allowing the debtors to continue to have the protection of the automatic stay in this case while they negotiate and finalize a reaffirmation agreement with Chase Bank ("Chase"). Because the relief requested is a request for relief principally against Chase and incidentally against all of the debtors' creditors, this matter is a contested matter under Fed. R. Bankr. P. 9014, and must be served on the parties against whom the debtors seek relief pursuant to Fed. R. Bankr. P. 7004.

The debtors did not properly serve Chase, the principal creditor against whom the debtors seek relief. The docket does not contain a proof of service that evidences that Chase was ever served with the motion. Furthermore, to the extent that the motion seeks relief against the debtors' other creditors, no other creditors were served with the motion.

The court will issue a minute order.

9. [12-28734](#)-B-7 MICHAEL/CHERYL MELLOW CONTINUED MOTION TO DISMISS  
[12-2350](#) RSK-1 ADVERSARY  
FORD MOTOR CREDIT COMPANY LLC 7-18-13 [[61](#)]  
V. MELLOW

**Tentative Ruling:** This matter came on for final hearing on September 3, 2013, at 9:32 a.m. Appearances are noted on the record. The following constitutes the court's findings of fact and conclusions of law, pursuant to Federal Rule of Bankruptcy Procedure 7052.

The motion to dismiss is denied. Judgment will be rendered (1) against plaintiff stating that plaintiff shall take nothing by reason of the complaint and (2) in favor of defendant in the amount of \$3,277.50, the amount of the discovery sanctions previously awarded to defendant (which the court ruled would be included in a final judgment).

The court will issue a minute order on the motion. Counsel for the defendant shall submit a proposed judgment that conforms to the court's ruling.

10. [12-28734](#)-B-7 MICHAEL/CHERYL MELLOW  
DMW-2

MOTION FOR COMPENSATION FOR  
GABRIELSON & COMPANY,  
ACCOUNTANT(S), FEES: \$1,430.00,  
EXPENSES: \$259.38  
8-1-13 [[91](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$1430.00 in fees and \$259.38 in expenses, for a total of \$1689.38, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period November 20, 2012, through July 29, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

11. [11-48519](#)-B-11 VICTOR HANNAN  
DL-5

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF DAHL LAW FOR  
WALTER R. DAHL, DEBTOR'S  
ATTORNEY(S), FEES: \$9,641.00,  
EXPENSES: \$213.54  
7-24-13 [[131](#)]

**Tentative Ruling:** The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$9641.00 in fees and \$213.54 in costs, for a total of \$9854.54. The applicant is authorized to apply the amount of \$9854.54 from the balance of the applicant's retainer (\$14,916.09) to the allowed total. Except as so ordered, the motion is denied.

On December 8, 2011, the debtor filed a chapter 11 petition. By order entered on January 27, 2012 (Dkt. 34) (the "Order"), the court authorized employment of the applicant as counsel for the debtor-in-possession. The Order further approved the applicant's employment with an effective date of December 8, 2011. The applicant now seeks compensation for services for the period of October 1, 2012, through June 30, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

12. [09-35885](#)-B-7 VENUS LILLYBRIDGE  
VL-4

MOTION TO DISMISS CASE AND  
OBJECTION TO TRUSTEE'S FINAL  
REPORT AND APPLICATIONS FOR  
FINAL COMPENSATION AND/OR  
REIMBURSEMENT OF EXPENSES  
7-8-13 [[577](#)]

**Tentative Ruling:** None.

13. [11-35325](#)-B-7 JAMES COXETER  
MPD-8

MOTION TO SELL AND/OR MOTION TO  
PAY , MOTION TO WAIVE THE  
FOURTEEN DAY STAY PROVISIONS  
8-5-13 [[872](#)]

**Tentative Ruling:** The opposition filed by Wells Fargo Bank ("WFB") is overruled. The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell real property located at 23554 Old 44 Drive, Millville, California (Shasta County) (APN 060-560-012) (the "Property") in an "as-is" and "where-is" condition to Robert Harris and Nancy Harris for \$925,000.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion, including full payment of the loans secured by the first- and second-priority deeds of trust in the Property pursuant to payoff demands submitted by the holders of the loans at closing. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 6004(h) is waived. The application for real estate broker's commissions is approved on a final basis in the amount of \$46,250.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing on the motion.

WFB's opposition is overruled because nowhere in the motion does the trustee state that WFB will receive only a maximum of \$525,000.00 on account of the loan secured by a first deed of trust in the Property. The trustee merely estimates the amount of WFB's claim at \$525,000.00. The motion clearly states on page 5 that the loans secured by the first and second deeds of trust in the Property "will be paid in full from the sale proceeds." (Dkt. 872 at 5). The court does not authorize a sale free and clear of WFB's lien pursuant to 11 U.S.C. § 363(f) because a sale free and clear is not necessary; WFB's lien will be satisfied in full from the proceeds of the sale.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27,

2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for broker's commission, normal and customary costs of sale, unpaid taxes which constitute a lien on the Property, consensual liens (including WFB's lien) and any exemption claimed by the debtor.

On June 20, 2011, the debtor filed a chapter 7 petition. By order entered on June 10, 2013, (Dkt. 838) (the "Order"), the court authorized the trustee to retain House of Realty, Inc. ("HOR") as real estate broker for chapter 7 trustee in this case. HOR is to receive 5% of the sales price of the Property. HOR now seeks compensation for commissions earned from the sale. As set forth in the application, the approved commissions are reasonable compensation for actual, necessary and beneficial services.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The trustee shall submit an order that conforms to the foregoing ruling.

14. [13-25726](#)-B-7 ALEXANDER HERNANDEZ MOTION TO EXTEND TIME/DEADLINE  
AMJ-1 AND/OR MOTION TO EXTEND  
DEADLINE TO FILE A COMPLAINT  
OBJECTING TO DISCHARGE OF THE  
DEBTOR  
8-6-13 [[13](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

15. [10-44131](#)-B-13 RAPHAEL METZGER AND MOTION BY LINDA D. DEOS TO  
[11-2530](#) MELANIE MEDINA-METZGER LDD-11 WITHDRAW AS ATTORNEY  
METZGER ET AL V. BAYVIEW LOAN 7-29-13 [[117](#)]  
SERVICING, LLC

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The movant, Linda Deos, is permitted to withdraw as counsel for plaintiffs Raphael Metzger and Melanie Medina-Metzger ("Plaintiffs"), in this adversary proceeding. The movant shall forward to the Plaintiffs any documents or correspondence that are related to this case and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that Plaintiffs have rendered it unreasonably difficult for movant to carry out the employment effectively, citing an irreparable breakdown in her working relationship

with the plaintiffs. In the absence of opposition, movant has shown sufficient grounds for permissive withdrawal under California Rule of Professional Conduct 3-700(C) (1) (d).

The court will issue a minute order.

16. [13-28315](#)-B-7 NIKETA WICKER  
DMW-1
- OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
7-31-13 [[23](#)]

**Tentative Ruling:** The debtor's opposition is overruled without prejudice. The trustee may submit an order dismissing the case without further notice or hearing.

The trustee's motion to dismiss is brought on the ground that Debtor failed to appear at the first meeting of creditors on July 30, 2013. Although Debtor filed a form notice of hearing opposing the motion ("Opposition"), Debtor's notice fails to provide any explanation as to why she did not appear at the scheduled meeting of creditors.

Furthermore, the Opposition was not timely filed as required by the Court's Notice of Trustee's Motion to Dismiss (Dkt. 25). Opposition was to be filed no later than 14 days' prior to the hearing date, or August 20, 2013. Debtor filed the Opposition on August 23, 2013.

The court also notes that according to the trustee's recent report, Debtor failed to appear at the continued meeting of creditors which was scheduled for August 13, 2013.

The court will issue a minute order.

17. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA  
KG-353
- MOTION TO VALUE COLLATERAL AND  
TO AVOID LIEN OF PNC FINANCIAL  
SERVICES GROUP  
8-3-13 [[391](#)]

**Tentative Ruling:** This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for the purposes of this motion, the debtors' real property located at 320 Arkansas Street, Vallejo, California (the "Property") had a value of \$120,000.00 on the date of the filing of the motion. Except as so ordered, the motion is denied.

The foregoing valuation does not establish a value of the Property for



all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy paragraph 506.03[d][10] (15th ed. Rev. 2009). In this case, no plan has been confirmed and a disclosure statement is yet to be approved.

The court will issue a minute order.

18. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO VALUE COLLATERAL AND  
KG-354 TO AVOID LIEN OF PNC FINANCIAL  
SERVICES GROUP  
8-3-13 [[399](#)]

**Tentative Ruling:** This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for the purposes of this motion, the debtors' real property located at 1202 Rollingwood Dr., Vallejo, California (the "Property") had a value of \$133,000.00 on the date of the filing of the motion. Except as so ordered, the motion is denied.

The foregoing valuation does not establish a value of the Property for all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy paragraph 506.03[d][10] (15th ed. Rev. 2009). In this case, no plan has been confirmed and a disclosure statement is yet to be approved.

The court will issue a minute order.

19. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO VALUE COLLATERAL AND  
KG-355 TO AVOID LIEN OF REALTIME  
RESOLUTION, INC.  
8-3-13 [[395](#)]

**Tentative Ruling:** The motion is denied without prejudice.

The motion suffers from a procedural defect. It does not appear to the

court that the proper creditor was served with the moving papers. Although the moving papers refer to "Real Time Resolutions, Inc." as the creditor, in reviewing the debtors' filed certificate of service (Dkt. 398 at 2), the address provided for Real Time Resolutions, 1510 Fourth Street, Suite 1, Berkeley, CA 94710, is an address for a different company, "Real Time Solutions, Inc."

There is no evidence that the debtors correctly served Real Time Resolutions, Inc., allegedly the holder of the second deed of trust in real property located at 230 Wicked Wedge Way, Las Vegas, Nevada. Debtors have provided no evidence that Real Time Resolutions, Inc. and Real Time Solutions, Inc. are combined in any way.

The court notes that this is not the first time that Debtors have encountered a service problem with this particular creditor. In the court's civil minutes dated July 23, 2013 (Dkt. 357) for a prior motion in this case, the court stated:

There is also no evidence that the debtors correctly served Real Time Resolutions, Inc., allegedly the holder of the second deed of trust in real property located at 230 Wicked Wedge Way, Las Vegas, Nevada (the "Property") and holder of a security interest in the rents generated by the Property.

According to the only certificate of service filed with the motion (Dkt. 100 at 2) the debtors served Frederick Wright at "Real Time Solutions" in Berkeley, California. The debtors have not shown that service on "Real Time Solutions" is sufficient to effect service on Real Time Resolutions, Inc. The court notes that Real Time Solutions, Inc. and Real Time Resolutions, Inc. are two completely separate corporate entities registered to do business in the State of California.

The address listed on the certificate of service for the prior motion (Dkt. 100 at 2) is the same as the one listed on the certificate of service for this motion. Simply changing an addressee's name and the name of the company does not qualify as proper service. Moreover, these aforementioned changes, in light of the court's prior minutes, give the appearance that Debtors are either careless or, worse, trying to deceive the court.

The court will issue a minute order.

20. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA  
PD-1

MOTION FOR APPROVAL OF  
STIPULATION RE: TREATMENT OF  
DEBTORS' PROPOSED CHAPTER 11  
PLAN OF REORGANIZATION  
8-2-13 [[380](#)]

**Tentative Ruling:** The motion is denied.

The court does not understand the first sentence of paragraph 10 of the stipulation (Dkt. 379), and the court will not approve the other provisions of paragraph 10. The court notes that the Plan defined in this stipulation is different from the Plan defined in the stipulation at

Dkt. 387.

The court will issue a minute order.

21. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA  
PD-2

MOTION FOR APPROVAL OF  
STIPULATION RE: TREATMENT OF  
CLAIM UNDER DEBTORS' PROPOSED  
CHAPTER 11 PLAN OF  
REORGANIZATION  
8-2-13 [[385](#)]

**Tentative Ruling:** The motion is denied.

The court does not understand the first sentence of paragraph 11 of the stipulation (Dkt. 387), and the court will not approve the other provisions of paragraph 11 or paragraphs 3 and 17 of the stipulation. The court notes that the Plan defined in this stipulation is different from the Plan defined in the stipulation at Dkt. 379.

The court will issue a minute order.

22. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA  
PD-3

MOTION FOR APPROVAL OF  
STIPULATION RE: TREATMENT OF  
CLAIM UNDER DEBTORS' PROPOSED  
CHAPTER 11 PLAN OF  
REORGANIZATION  
8-5-13 [[421](#)]

**Tentative Ruling:** The motion is denied.

The court does not understand the first sentence of paragraph 11 of the stipulation (Dkt. 424, pp. 2-6), and the court will not approve the other provisions of paragraph 11 or paragraph 14 of the stipulation.

The court will issue a minute order.

23. [12-29460](#)-B-7 MARK/MARIANNA HARRIS  
[13-2129](#) LBG-2  
RODRIGUEZ V. HARRIS

MOTION FOR ENTRY OF DEFAULT  
JUDGMENT  
8-2-13 [[38](#)]

**Tentative Ruling:** None.

**Tentative Ruling:** The debtor's counterclaim is dismissed without leave to amend.

The debtor's counterclaim is based upon a pre-petition event. Specifically, debtor is attempting to assert a "counterclaim" against Wells Fargo and other various entities or persons involved in the foreclosure of his property that took place prior to Debtor filing his chapter 7 petition.

The debtor lacks prudential standing to bring this counterclaim. Constitutional standing is a necessary element of subject matter jurisdiction under Article III of the Constitution. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Standing involves two inquiries. In the first prong, the court must ask whether a plaintiff has suffered sufficient injury to satisfy the "case or controversy" requirement of Article III. In the second prong, if a plaintiff has suffered sufficient injury to satisfy Article III, the court must ask whether a statute has conferred "standing" on that plaintiff.

When the Debtor filed his chapter 7 bankruptcy petition on October 2, 2012, that action created a bankruptcy estate. 11 U.S.C. § 541(a)(1), (7) ("The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: ... all legal or equitable interests of the debtor in property as of the commencement of the case.... [and] [a]ny interest in property that the estate acquires after the commencement of the case."). Section 541 is broad in scope and includes causes of action. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n. 9 (1983). Therefore, any claim or "counterclaim" of Debtor arising out of the pre-petition foreclosure existed on the date of the filing of Debtor's petition and became property of Debtor's bankruptcy estate.

By operation of law, the chapter 7 trustee - and not the debtor - alone has the capacity to sue on behalf of the bankruptcy estate. *In Re Estate of Spirtos*, 443 F.3d 1172, 1176 (9th Cir. 2006) ("[T]he bankruptcy code endows the bankruptcy trustee with the exclusive right to sue on behalf of the estate."). See also 11 U.S.C. § 323(b) ("The trustee in a case under this title has capacity to sue and be sued."); *In re Eisen*, 31 F.3d 1447, 1451 n. 2 (9th Cir.1994) ("Once appointed a trustee, the debtor's assets and claims pass to the trustee, making the trustee 'the proper party in interest, and the only party with standing to appeal the bankruptcy court's order.' " (quoting *Hancock Bank v. Jefferson*, 73 B.R. 183, 185 (Bankr.S.D.Miss.1986)); *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707-09 (9th Cir.1986) (holding that debtor's claim of emotional distress properly belonged to the estate). Because the debtor brought this counterclaim after the filing of his bankruptcy petition, and because the subject of this counterclaim involves property

(i.e. claims for relief) that is a part of the Debtor's bankruptcy estate, the only party that can pursue the counterclaim is the chapter 7 trustee. Accordingly, the Debtor lacks the prudential standing necessary to bring the counterclaim.

It is also important to note that when the chapter 7 trustee abandons the claims or "counterclaim," the Debtor regains standing to bring that "counterclaim" because "upon abandonment, the debtor's interest in the property is restored nunc pro tunc as of the filing of the bankruptcy petition." Catalano v. Comm'r of Internal Revenue, 279 F.3d 682, 685 (9th Cir. 2002); see also Harris v. St. Louis Univ., 114 B.R. 647, 648 (E.D.Mo.1990). The Ninth Circuit describes abandonment in the bankruptcy context as, "the formal relinquishment of the property at issue from the bankruptcy estate." Catalano, 279 F.3d at 685. Here, the "counterclaim" has not been properly abandoned.

Neither has the "counterclaim" revested in Debtor as a result of dismissal or closure of the bankruptcy case.

The court will issue a minute order.

25. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO USE CASH COLLATERAL  
KG-356 8-5-13 [[409](#)]

**Tentative Ruling:** The motion is granted. The debtors are authorized to use cash collateral consisting of the rents from real property located at 105 Mayo Street, Vallejo, California in a manner consistent with the budget filed with the motion as Exhibit "A" (Dkt. 411), provided that payments made to lienholder GMAC Mortgage (serviced by Ocwen Loan Servicing, LLC) are applied by the bank only to reduce the amount of its allowed secured claim. Except as so ordered, the motion is denied.

The court will issue a minute order.

26. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO USE CASH COLLATERAL  
KG-356 8-5-13 [[412](#)]

**Tentative Ruling:** The motion is denied without prejudice.

The motion suffers from a procedural defect. It does not appear to the court that Ocwen Loan Servicing, LLC ("Ocwen") the holder of the second deed of trust (allegedly with an assignment of rents provision) encumbering the real property located at 3728 Rocky Shore Drive, Vallejo, California, that is the subject of this motion, was properly served with the moving papers.

As a contested matter under Fed. R. Bankr. P. 9014, the motion must be served in accordance with Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the "attention of an officer, a managing or general agent or to any other agent authorized by

law to receive service of process." In this case, the debtors served Ocwen "Attn: Bankruptcy Department." There is no evidence that "Bankruptcy Department" is an officer, a managing or general agent or any other agent authorized by law to receive service of process. Accordingly, the motion is denied without prejudice.

In addition, if and when the debtors re-file this motion, the motion should set forth additional information to aid the court and parties in interest in evaluating the motion. Specifically, the motion should set forth the value of the real property generating the rents as well, the total amount of encumbrances on the property and whether the foregoing information is subject to being affected by an ongoing proceedings such as motions to value collateral or pending stipulations regarding collateral valuation or plan treatment. The foregoing will assist the court's evaluation of the matter.

The court will issue a minute order.

27. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO USE CASH COLLATERAL  
KG-357 8-5-13 [[415](#)]

**Tentative Ruling:** The motion is denied without prejudice.

The motion suffers from a procedural defect. It does not appear to the court that Realtime Resolutions, Inc., the holder of the second deed of trust (allegedly with an assignment of rents provision) encumbering the real property located at 230 Wicked Wedge Way, Las Vegas, Nevada, that is the subject of this motion, was properly served with the moving papers. Although the moving papers refer to "Realtime Resolutions, Inc." as the creditor, in reviewing the debtors' filed certificate of service (Dkt. 416 at 2), the address provided for Realtime Resolutions, 1510 Fourth Street, Suite 1, Berkeley, CA 94710, is an address for a different company, "Real Time Solutions, Inc."

There is no evidence that the debtors correctly served Real Time Resolutions, Inc., allegedly the holder of the second deed of trust in real property located at 230 Wicked Wedge Way, Las Vegas, Nevada. Debtors have provided no evidence that Realtime Resolutions, Inc. and Real Time Solutions, Inc. are combined in any way.

The court notes that this is not the first time that Debtors have encountered a service problem with this particular creditor. In the court's civil minutes dated July 23, 2013 (Dkt. 357) for a prior motion in this case, the court stated:

There is also no evidence that the debtors correctly served Real Time Resolutions, Inc., allegedly the holder of the second deed of trust in real property located at 230 Wicked Wedge Way, Las Vegas, Nevada (the "Property") and holder of a security interest in the rents generated by the Property.

According to the only certificate of service filed with the motion (Dkt. 100 at 2) the debtors served Frederick Wright at "Real Time Solutions" in Berkeley, California. The debtors have not shown that service on "Real Time Solutions" is sufficient to effect service on

Real Time Resolutions, Inc. The court notes that Real Time Solutions, Inc. and Real Time Resolutions, Inc. are two completely separate corporate entities registered to do business in the State of California.

The address listed on the certificate of service for the prior motion (Dkt. 100 at 2) is the same as the one listed on the certificate of service for this motion. Simply changing an addressee's name and the name of the company does not qualify as proper service. Moreover, these aforementioned changes, in light of the court's prior minutes, give the appearance that Debtors are either careless or, worse, trying to deceive the court.

In addition, if and when the debtors re-file this motion, the motion should set forth additional information to aid the court and parties in interest in evaluating the motion. Specifically, the motion should set forth the value of the real property generating the rents as well, the total amount of encumbrances on the property and whether the foregoing information is subject to being affected by an ongoing proceedings such as motions to value collateral or pending stipulations regarding collateral valuation or plan treatment. The foregoing will assist the court's evaluation of the matter.

The court will issue a minute order.

28. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO USE CASH COLLATERAL  
KG-358 8-5-13 [[403](#)]

**Tentative Ruling:** The motion is granted. The debtors are authorized to use cash collateral consisting of the rents from real property located at 240 Nicole Way, Vallejo, California in a manner consistent with the budget filed with the motion as Exhibit "A" (Dkt. 405), provided that payments made to lienholder JPMorgan Chase Bank are applied by the bank only to reduce the amount of its allowed secured claim. Except as so ordered, the motion is denied.

The court will issue a minute order.

29. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO USE CASH COLLATERAL  
KG-359 8-5-13 [[418](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to use cash collateral consisting of the rents from real property located at 1202 Rollingwood Drive, Vallejo, California in a manner consistent with the budget filed with the motion as Exhibit "A" (Dkt. 420), provided that payments made to lienholder Wells Fargo Bank are applied by the bank only to reduce the amount of its allowed secured claim. Except as so ordered, the motion is denied.

The court will issue a minute order.

30. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO USE CASH COLLATERAL  
KG-360 8-5-13 [[406](#)]

**Tentative Ruling:** The motion is denied without prejudice.

The motion is incomplete. This is a motion for authorization to use cash collateral consisting of the rents from real property located at 1301 Arkansas Street, Vallejo, California. The motion references a cash collateral budget filed as Exhibit "A." Exhibit "A" (Dkt. 408), however is a cash collateral budget for real property located at 240 Nicole Way, Vallejo, California. The court and parties in interest cannot evaluate the motion without the cash collateral budget.

In addition, if and when the debtors re-file this motion, the motion should set forth additional information to aid the court and parties in interest in evaluating the motion. Specifically, the motion should set forth the value of the real property generating the rents as well, the total amount of encumbrances on the property and whether the foregoing information is subject to being affected by an ongoing proceedings such as motions to value collateral or pending stipulations regarding collateral valuation or plan treatment. The foregoing will assist the court's evaluation of the matter.

The court will issue a minute order.

31. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION FOR COMPENSATION FOR  
KG-361 KAYLA M. GRANT, DEBTOR'S  
ATTORNEY(S), FEES: \$21,270.00,  
EXPENSES: \$348.48  
8-7-13 [[427](#)]

**Tentative Ruling:** The application is granted in part to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on an interim basis in the amount of \$14,187.00 in fees and \$323.25 in costs, for a total of \$14,510.25 in fees and costs, for services rendered by the applicant during the period April 3, 2013, to July 25, 2013. The applicant is authorized to apply the \$10,000.00 balance of her retainer held in trust to the foregoing approved fees and costs, and the remainder shall be payable as a chapter 11 administrative expense. Except as so ordered, the application is denied.

The approved fees and costs represent a \$7,108.23 reduction in the total amount of fees and costs requested in the application. The reduction and the total amount of fees and costs approved is based on the following methodology.

First, the court considers only those fees and costs that are represented on the billing invoices submitted as Exhibits A-F to the motion. Section § 330 directs the court to authorize compensation only for, inter alia,



"actual" services. The invoices are the only evidence in support of the motion of the actual services performed and costs incurred by the applicant. The court also disregarded the invoice submitted as Exhibit "E" because it is a duplicate of the invoice submitted as Exhibit "D."

Second, the court disallows from the totals set forth in the invoices all fees charged and costs incurred by the applicant prior to April 3, 2013. The applicant's employment was approved by order entered August 13, 2013 (Dkt. 442) (the "Employment Order"). No earlier effective date of employment was specified in the Employment Order, so the applicant's employment was effective as of August 13, 2013. This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). However, the court construes the present application as requesting an effective date in the order approving the applicant's employment retroactive to February 26, 2013, the first date on which services were rendered, according to the invoices. The request for an earlier effective date is granted in part. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment to state an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988) (extraordinary or exceptional circumstances to justify retroactive employment). Here, the employment application was filed on May 3, 2013. The court allows an earlier effective date of employment to April 3, 2013, which is 30 days prior to the filing date of the employment application. All fees and expenses sought for services rendered prior to April 3, 2013 are disallowed.

Finally, the court acknowledges that the applicant has voluntarily reduced the fees sought for several services rendered in this case. In light of the voluntary reduction, the court sees no need to further reduce the fees and expenses requested on the basis of reasonableness.

The applicant shall submit a proposed amended form of employment order that is consistent with the foregoing ruling, i.e. which includes all of the terms of the Employment Order at Dkt. 442, but which also specifies an effective date of employment of April 3, 2013. After entry of the amended employment order, the court will issue a minute order granting the motion for approval of compensation as set forth above.